

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

8:13CR105

vs.

TIMOTHY DE FOGGI,

Defendant.

ORDER

This matter is before the court on the defendant's, Timothy DeFoggi (DeFoggi), Notice of Intent to Introduce Classified Materials at Trial (Filing No. 156 - Notice [Sealed]). DeFoggi intends to offer information regarding classified projects he worked on to explain to the court and jury "why it was necessary for him to become familiar with the TOR network and the legitimate purposes for his use of the TOR network." **See** Filing No. 156 - Notice [Sealed]. In his Notice, DeFoggi references a December 17, 2013, letter wherein he noted his intent to use classified information and provided a list of classified intelligence programs.¹

When a defendant intends to introduce classified information at trial, he is required to provide the court and the government with notice of such intention. **See** 18 U.S.C. App. 3, § 5(a) - Classified Information Procedures Act (CIPA). Section 5 of the CIPA requires a defendant to provide a "brief description of the classified information" in his notice. **See id.** "[T]his requirement [is] satisfied where the description informs [t]he government . . . exactly to which documents [the defendant] was referring, and [to] what information was contained in them." ***United States v. Rewald***, 889 F.2d 836, 855 (9th Cir. 1989).

DeFoggi's letter merely provides a program name, who developed the program, the program classification, and the agency coordinating the program. Neither the notice nor DeFoggi's December 17, 2013, letter provide a brief description of the classified information. Further, DeFoggi has not indicated the government has in its possession

¹ Although the court received the letter on December 17, 2013, the letter is dated December 12, 2013. DeFoggi represents he sent the letter to the government's attorney on or about December 12, 2013, and his counsel hand-delivered the letter to the United States Attorney's Office on June 9, 2014. **See** Filing No. 156 - Notice [Sealed].

or has access to the information DeFoggi seeks to introduce at trial. Without this information, the government cannot adequately challenge use of the classified information. **See** 18 U.S.C. App. 3, §§ 5(a), 6(a) (“No defendant shall disclose any information . . . until the United States has been afforded a reasonable opportunity to seek a determination” “concerning the use, relevance, or admissibility of classified information[.]”). Therefore, **on or before June 26, 2014**, DeFoggi shall provide the court and the government a list and brief description of the “U.S. Government systems, sources, methods, threat assessments and emerging technologies” DeFoggi seeks to introduce. The government shall then provide the court and DeFoggi notice of the classified information the government takes issue with, if any, **on or before July 3, 2014**. **See** 18 U.S.C. App. 3, § 6(b)(1). Thereafter, the court will conduct a hearing on **July 10, 2014, at 10:00 a.m.** in Courtroom No. 7, Second Floor, Roman L. Hruska U.S. Courthouse, 111 South 18th Plaza, Omaha, Nebraska, to make “determinations concerning the use, relevance, or admissibility of classified information.” **See** 18 U.S.C. App. 3, § 6(a).

IT IS SO ORDERED.

Dated this 18th day of June, 2014.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge